IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

INCOME TAX REFERENCE NO. 76 of 1990

The Commissioner of Income Tax ... Applicant.

vs.

Mafatlal Industries Ltd., ... Respondent

Mr. Ashok Kotangale for Applicant.

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CORAM: V. C. DAGA AND A. S. AGUIAR JJ.

Date: 6th July, 2005.

P.C.

1. The question of law referred to under section 256(1) of the Income-tax Act for consideration of this court by the Tribunal at the instance of the revenue are as follows:

(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the expenditure incurred by the assessee in respect of (i) premium or deferred annuity policy (ii) premium in

respect of personal accident insurance, (iii) premium in respect of medical insurance and (iv) reimbursement of medical expenses should not be considered as benefit or perquisites for the purpose of computing disallowance under section 40(c) /40A(5) of the Income Tax Act 1961?"

2. Whereas the permissibility of the first item of expenditure incurred by the assessee in respect of premium of deferred annuity policy is concerned the issue is covered by the judgment of this court in the case of **Commissioner of Income Tax vs. Hico Products Pvt. Ltd. [1993] 201 ITR page 567 (Bom.).**

3. **W**hereas the permissibility of the second item of expenditure incurred by the assessee in respect of premium in respect of personal accident insurance is concerned the same is also covered by the judgment of this court in the case of **Kores (India) Ltd., vs. Commissioner of Income Tax,** reported in **196 ITR 749 (Bom.)**.

4. Whereas the permissibility of the third item of expenditure incurred by the assessee in respect of premium on medical insurance is concerned, we are of the opinion that this item of expenditure should receive the same treatment as that of second item of expenditure referred to herein above. In other words the premium in respect of

personal accident insurance and premium of respect of medical insurance should get the same treatment.

5. In the above view of the matter, items of expenditure referred to herein above and mentioned in the question referred to as item nos (i), (ii) and (iii) could not have been disallowed. Accordingly the issue with respect to the above three items referred to herein above, is answered in favour of the assessee and against the revenue.

6. Whereas the permissibility of the fourth item of expenditure relating to the reimbursement of medical expenses is concerned; the same is also covered by the judgment of the Supreme Court in the case of **Commissioner of Income Tax vs. Mafatlal Gangabhai and Co., (P) Ltd., 219 ITR 644 (S.C.)**., with the result, reimbursement of medical expenses would not be permissible. Thus issue with respect to the expenditure involved in item no. iv is concerned the same is answered in favour of the revenue and against the assessee.

7. This reference is accordingly disposed of with no order as to costs.

(V. C. DAGA J.) (A. S. AGUIAR J.)

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